

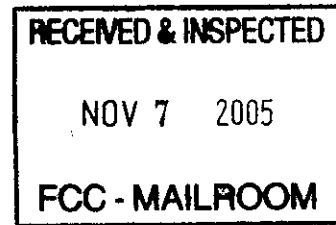


ENCLOSURE WITH BODY ORIGINAL

November 3, 2005

Via ECFS and Overnight Mail

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743



**Re: Request of RNK, Inc., d/b/a RNK Telecom for a Limited Waiver – Expedited
Action Requested, WC Docket No. 05-196**

Dear Ms. Dortch:

Pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, RNK, Inc., d/b/a RNK Telecom hereby submits one (1) original and four (4) copies of the above-captioned document for filing in WC Docket No. 05-196.

Please indicate your receipt of this filing on the additional first page of the filing provided and return it to the undersigned in the enclosed self-addressed, postage prepaid, envelope.

Thank you for your attention to, and assistance in, this matter.

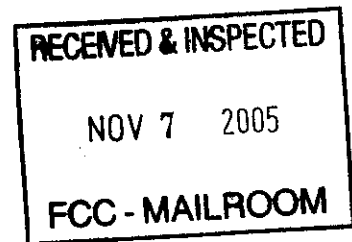
Sincerely,

Leah Williams
Sr. Counsel

cc: Best Copy and Printing, Inc. (via Overnight Mail)
Janice Myles, Competition Policy Division, Wireline Competition Bureau (via Email)

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554



In the Matters of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
E911 Requirements for IP-Enabled Service Providers)	WC Docket No. 05-196

**REQUEST OF RNK, INC., D/B/A RNK TELECOM FOR A LIMITED WAIVER -
EXPEDITED ACTION REQUESTED**

Pursuant to Section 1.3 of the Commission's Rules,¹ RNK, Inc. d/b/a RNK Telecom ("RNK") hereby respectfully requests the Federal Communications Commission (the "Commission"), to grant its request for limited waiver associated with the November 28, 2005 deadline for Interconnected VoIP Service Providers ("IVSPs") to provide E911 services to subscribers as set forth in the Commission's VoIP E911 Rules.² Due to the looming deadline, RNK requests that the Commission grant the requested relief on an expedited basis.

I. INTRODUCTION

RNK, a small, privately-held company, based in Dedham, Massachusetts is an integrated communications provider, marketing local and interexchange telecommunications services, as well as Internet services and IP-enabled voice services. RNK offers "interconnected VoIP services" ("IVS"), as defined by the Commission in its *VoIP E911 First Report and Order*,³ primarily to independent resellers on a wholesale basis, but also through retail channels.

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 9.1-9.5.

³ In the Matters of IP-Enabled Services (WC Docket No. 04-36) and E911 Requirements for IP-Enabled Service Providers (WC Docket No. 05-196), FCC 05-116 para. 24 (June 3, 2005) ("*VoIP E911 First Report and Order*").

In addition to providing IVS, RNK is a certified Competitive Local Exchange Carrier ("CLEC") in the states of Massachusetts, Rhode Island, New York, Florida, New Jersey, New Hampshire, and Connecticut offering residential and/or business telecommunications services via resale and through its own facilities. RNK also has interexchange ("IXC") authority in Vermont and Maine, as well as international § 214 authority from the Commission.

II. BACKGROUND

A. The VoIP E911 Rules

The Commission established its authority to impose E911 requirements on IVSPs in the *VoIP E911 First Report and Order*, in part, by relying on its obligation to make available to all people of the United States a "rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications"⁴

The Commission's VoIP E911 Rules require, in part, that IVSPs provide each of their IVS subscribers with E911 service that transmits every 9-1-1 call placed, as well as Automatic Number Identification ("ANI"), and Registered Location⁵ information to the Public Safety Answering Point ("PSAP"), designated statewide default answering point, or appropriate local emergency authority that serves the subscriber's Registered Location by November 28, 2005.⁶ Further, IVSPs must transmit 911 calls via the existing Wireline E911 Network.⁷

⁴ 47 U.S.C. § 151 (emphasis added); *VoIP E911 First Report and Order* para. 29.

⁵ "The most recent information obtained by an interconnected VoIP service provider that identifies the physical location of an end user." 47 C.F.R. § 9.3.

⁶ 47 C.F.R. § 9.5(b).

⁷ "A dedicated wireline network that (1) is interconnected with but largely separate from the public switched telephone network, (2) includes a selective router, and (3) is utilized to route emergency calls and related information to PSAPs, designated statewide default answering points, appropriate local emergency authorities or other emergency authorities or other emergency answering points." 47 C.F.R. § 9.3.

B. RNK's Compliance Efforts to Date

As of the filing of this Request for Limited Waiver, RNK is providing E911 service, as required under the VoIP E911 Rules, to one hundred percent (100%) of the IVS subscribers in RNK's existing CLEC footprint.⁸ These subscribers comprise approximately seventy-five percent (75%) of RNK's total IVS subscriber base. Since the release of the *VoIP E911 First Report and Order*, RNK has made compliance a top priority, even hiring a project manager dedicated to coordinating compliance efforts and ensuring that milestone goals continue to be achieved. RNK has also worked diligently to identify solutions that could be made available to the remainder of its IVS subscribers and end users by the November 28th compliance deadline.

In an effort to provide E911 service to the remainder of its subscriber base, RNK has identified areas in which it can utilize its CLEC status to provide E911 service to its VoIP customers and end users by interconnecting with the local ILEC. In Local Access and Transport Area ("LATA") 224 in New Jersey, for example, RNK selected and adopted an interconnection agreement pursuant to 47 U.S.C. 252 (i), provisioned facilities, and ordered 911 trunks from the local ILEC. While there have been minor delays associated with the ordering of services, as long as the provisioning of service moves forward seamlessly, RNK believes it will be able to provide E911 service to subscribers in LATA 224 by May 28, 2006. Likewise in LATA 460 in Florida, RNK selected and adopted an interconnection agreement and is in the process of provisioning facilities and ordering 911 trunks from the local ILEC. This is the first opportunity that RNK has had to work with this particular ILEC, so RNK cannot estimate with accuracy a date by which it will be able to provide E911 service to its subscribers in LATA 460 in Florida. RNK is optimistic, however, barring any unforeseen delays, that it will also be able to achieve compliance by May 28, 2006.

⁸ Massachusetts, New Hampshire, Rhode Island, and New York (LATA 132).

In those areas in which RNK is not a certified CLEC, RNK is attempting to sew together a patchwork of solutions to approximate a nationwide solution. In furtherance of these efforts, RNK has contacted a majority of the Local Exchange Carriers (LECs) and third party vendors (together, "Third Party Providers") that currently purport to offer some type of E911 solution that complies with the Commission's VoIP E911 Rules. RNK's efforts have revealed that the current E911 solutions are either: 1) not available in particular U.S. states and/or LATAs in which its subscribers are currently located;⁹ 2) not fully developed and ready for deployment by November 28, 2005; 3) not compliant with the Commission's Rules (e.g., 911 calls routed to 10-digit NPA-NXX numbers of PSAPs and call center solutions); and/or 4) offer unreasonable contract terms including, but not limited to, lengthy term commitments, excessive start-up fees, and monthly minimum requirements.¹⁰ Furthermore, these terms are often not negotiable.

RNK has recently learned of additional VoIP E911 solutions that have just been memorialized in writing, and has requested technical specifications from the offering Third Party Providers to review from an operations and compliance standpoint. Once RNK receives these specifications and the applicable commercial agreements, RNK will need a sufficient amount of time to engage in testing to ensure the deployed solution will accomplish its intended goal to accurately route subscribers' 911 dialed calls. Concurrent with the testing process, RNK and the Third Party Providers will commence contract negotiations that take time, even when the parties are engaged in good faith negotiations. While RNK has begun testing the solution of one of these Third Party Providers, it has encountered technical challenges that likely cannot be overcome in the

⁹ Oftentimes, coverage is unavailable in more rural locations.

¹⁰ While RNK is, in most cases, subject to confidentiality agreements related to pricing proposed by Third Party Providers, it can offer a range of pricing to give the Commission a sense of how burdensome pricing can be, especially for a small IVSP. For less than nationwide service, RNK has received quotes for initial "set-up" fees in the \$50,000 to \$80,000 range, and minimum monthly recurring fees between \$5,000 and \$15,000, along with term commitments requiring those monthly fees for between two and five years, regardless of whether there is actual use.

near future. RNK anticipates similar difficulties arising as it tests other solutions. Because of their late release, it is highly doubtful that any of these recently, or soon-to-be, offered solutions will be deployable prior to the Commission's November 28th compliance deadline.

To date, RNK has entered into agreements with two Third Party Providers that offer immediately available solutions that appear to comply with the Commission's VoIP E911 Rules. RNK has entered the testing phase with these Third Party Providers and while technical problems have arisen (e.g., test 911 calls that have not completed), the parties are working hard to resolve these and other failures. Assuming good faith cooperation on the part of Third Party Providers, and no limitations related to network interoperability, RNK is optimistic, that the solutions offered by these two Third Party Providers will be in place in the near future. With the addition of the coverage provided by these Third Party Providers to RNK's coverage already in place in its existing footprint, RNK will successfully provide E911 service to approximately eight-five percent (85%) of RNK's subscribers and end users of RNK's independent resellers, who could also benefit from RNK's ability to provide E911 service.

III. RELIEF SOUGHT

Since the June 3, 2005 release date of the VoIP E911 First Report and Order, RNK has been actively working toward compliance and has used best efforts to meet the deadlines established by the Commission. When establishing the November 28, 2005 compliance deadline, however, the Commission acknowledged that the compliance timeframe was aggressive.¹¹ This "aggressive" timeframe has necessitated RNK's reliance on Third Party Providers to provide E911 service as contemplated in the VoIP E911 Rules. Lack of nationwide, compliant solutions, technical problems associated

¹¹ *VoIP E911 First Report and Order* para. 37.

with existing solutions and the cost prohibitive nature of implementation make IVSP's compliance with the Commission's November 28th deadline overly burdensome.

As RNK has good cause for its inability to adhere to the compliance deadline set forth in sections 9.5(b) and (c) of the VoIP E911 Rules,¹² and strict compliance therewith would be contrary to the public interest, the Commission should grant RNK's request for limited waiver of sections 9.5(b) and (c) of the VoIP E911 Rules¹³ with regard to the approximately twenty-five percent (25%) of RNK's IVS subscriber base to which RNK will be unable to provide E911 service by November 28th. RNK similarly requests relief with regard to subscribers that fail to provide notice of updated Registered Locations to RNK.

Specifically, RNK is seeking: (1) a six (6) month extension of time (i.e., through May 28, 2006), to cover its subscriber base in the serving territory of Verizon New Jersey within LATA 224 in the State of New Jersey; in the serving area of BellSouth Telecommunications located in LATA 460 in the State of Florida; and in those areas covered by the two Third Party Providers with whom RNK has contracted; and (2) a one (1) year extension of time to cover the remainder of its subscriber base. RNK respectfully requests that the Commission waive enforcement action against it during these respective extension periods. In the alternative, should the Commission deny (or deny in part for a specific area) RNK's request for relief, RNK requests that the Commission waive enforcement action for at least ninety (90) days from the compliance deadline to provide RNK with an opportunity to properly transition those subscribers that will not have access to E911 to an alternate service.

¹² 47 C.F.R. § 9.5(b) and (c).

¹³ *Id.*

IV. WAIVER STANDARD

The Commission has the authority to waive its rules if there is "good cause" to do so under Section 1.3 of the Commission's Rules.¹⁴ The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest, and where special circumstances warrant a deviation from the rules, which deviation serves the public interest.¹⁵ In considering whether to grant a waiver, the Commission should take into account issues of hardship, equity, or more effective implementation of overall policy.¹⁶ In reviewing RNK's, and other IVSPs' waiver petitions, the Commission should also consider "technology-related issues or exceptional circumstances," which it has taken into account when addressing waiver petitions submitted by various wireless providers in the wireless E911 proceedings.¹⁷

V. THERE IS "GOOD CAUSE" FOR THE COMMISSION TO GRANT RNK A LIMITED WAIVER OF 47 C.F.R. § 9.5(b) and (c)

A. Grant of the Requested Limited Waiver is in the Public Interest

The principal purpose of the Telecommunications Act of 1996 is "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."¹⁸ In fact, in Section 706 of the Act, Congress requires both this Commission and state commissions to encourage the deployment of advanced telecommunication capabilities to all Americans within a

¹⁴ 47 C.F.R. § 1.3.

¹⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ See *WAIT Radio*, 418 F.2d at 1159.

¹⁷ Fourth Memorandum Opinion and Order, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, FCC 00-326 (CC Docket 94-102), 15 FCC Rcd. 17442, 17459, ¶ 43 (2000).

¹⁸ 1996 Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).

reasonable timeframe.¹⁹ With regard to Internet Protocol ("IP")-enabled services, specifically, the Commission has referred to such services as "innovative" and as having "a profound and beneficial impact on American consumers."²⁰ The Commission has further stated that IP-enabled services have increased economic productivity and growth, and it has recognized that VoIP, in particular, "will encourage consumers to demand more broadband connections, which will foster the development of more IP-enabled services."²¹ Should the Commission enforce its compliance deadlines, resulting in certain and immediate VoIP customer service terminations, a fundamental goal of the Act will be severely diminished.

Pursuant to the VoIP E911 Rules, IVSPs must provide E911 service as a condition of offering IVS to its subscribers. As such, in the event IVSPs are unable to provide E911 service to their subscribers by November 28, 2005, the subscribers' service must be disconnected. While RNK fully supports the Commission's goal to protect the safety of the IVS subscribers, as RNK has shown by providing subscribers and end-users within its footprint with mandatory 911 service even before the release of the *VoIP E911 First Report and Order*, it encourages the Commission to consider how the suspension of IVS service could compromise an informed consumer's desire to use a less expensive, mobile alternative to traditional plain old telephone ("POTS") service. As a small IVSP, it is critical for RNK to retain a customer base to generate revenues necessary to deploy E911 functionality and support the requisite E911 infrastructure. If the Commission fails to grant RNK's request for limited waiver in an expedited fashion, RNK will have no choice but to terminate service of as much as twenty -five percent (25%) of its VoIP subscribers and end-users that will not have E911 available to them by

¹⁹ 1996 Telecommunications Act of 1996 at § 706(a).

²⁰ *In the Matter of Vonage Holdings Corporation*, WC Docket No. 03-211 at ¶ 43.

²¹ *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4865 (2004) (IP-Enabled Services NPRM).

November 28, 2005. With the loss of these customers comes a significant loss of revenue that will directly affect RNK's ability to continue servicing its remaining VoIP subscribers and end users, all of whom have E911 service, thereby (somewhat ironically) likely depriving those subscribers of the use of an IVS compliant with the VoIP E911 Rules, in addition to the aforementioned twenty-five percent (25%). By granting RNK's request for limited waiver, the Commission will allow RNK to complete deployment of E911 service to its remaining IVS subscriber base, while permitting RNK's E911 compliant subscribers and end users to continue enjoying the benefits associated with their IVS

While the Commission has expressed its position that subscribers not be permitted to opt out of E911 service,²² RNK requests that the Commission permit RNK to seek consent on the part of those subscribers that will not have E911 made available to them by the compliance deadline to opt out of E911 service associated with their IVS (and agree to maintain another form of phone service), until the extended deadline that the Commission may grant RNK. RNK additionally requests similar relief with regard to those subscribers that fail to notify RNK of their new location.²³ In the event subscribers do not make RNK aware of their new location, RNK should not be required to provide E911 service (or be forced disconnect service where E911 may be unavailable). To that end, however, RNK continues to work diligently on an automatic location identification solution it has named "Edison," that uses GPS technology to provide E911 service to non-stationary, or nomadic, VoIP customers.

Until such time as automatic location identification solutions, such as RNK's Edison, become available, allowing subscribers to temporarily opt-out of E911 service with the full understanding of the potential ramifications is appropriate. As reported by

²² *VoIP E911 First Report and Order* para. 45.

²³ E.g., Vacations and business trips.

RNK to the Commission in its October 25, 2005 Subscriber Acknowledgement Report,²⁴ RNK has received acknowledgement from at least ninety percent (90%) of its subscriber base by October 30, 2005. These subscribers are fully aware of the limitations associated with their IVS, including those subscribers without E911 functionality.²⁵ Allowing the approximately twenty-five percent (25%) of RNK subscribers that will not have E911 service available to them by November 28, 2005 to temporarily opt out of such service and agree to maintain an alternate phone service would address the Commission's public safety goal by informing customers of the lack of 911 service (which they would likely expect while on a short vacation or a business trip), while continuing to further the public interest in the use of innovative, less expensive technologies, two vital Commission goals.

B. Strict Enforcement of the VoIP E911 Rules would be Overly Burdensome and Inequitable

In considering whether to grant a waiver, the Commission should evaluate issues of hardship, equity, and/or more effective implementation of overall policy.²⁶ The Commission acknowledged that it was setting an "aggressively short" timeframe within which IVSPs must provide E911 services, pursuant to the *VoIP E911 Order*,²⁷ and RNK does not control its ability to comply with the Commission's deadline. As even the Commission itself recognized,²⁸ RNK and other IVSPs are at least partly at the mercy of third party providers (i.e., ILECs) to deploy E911 service. Moreover, it is far from clear that the "solutions" envisioned by the Commission in the *VoIP E911 Order* (and

²⁴ RNK, Inc., d/b/a RNK Telecom, Subscriber Acknowledgement Report – October 25, 2005 (FCC WC Docket No. 05-196).

²⁵ Subscribers without access to 911 dialing are provided with clear notice of limitations of IVS service including, but not limited to, the following language: **YOU ACKNOWLEDGE THAT THIS SERVICE IS NOT MEANT FOR USE AS A PRIMARY LINE OR LIFELINE SERVICE. YOU WILL NOT HAVE ACCESS TO TRADITIONAL 911/E911 SERVICES AND SHOULD ALWAYS HAVE AN ALTERNATIVE MEANS OF ACCESSING THESE SERVICES.** You understand that in order to have access to 911/E911 services you will have to maintain your local phone service.

²⁶ See *WAIT Radio*, 418 F. 2d at 1159.

²⁷ *VoIP E911 Order* at ¶ 37.

²⁸ *Id.* at ¶ 38.

trumpeted by RBOC commenters previously in this proceeding)²⁹ are sufficiently developed, and/or if so, are economically viable alternatives for all but the largest IVSPs. This reality is reflected in draft legislation recently released by the Senate Commerce, Science and Transportation Committee,³⁰ which would require the Commission to include “an appropriate transition period for compliance” with its VoIP E911 Rules, while taking into consideration “available industry technology; operational standards; network security; and public safety answering point capabilities.”

1. Existing RBOC “Retail Solutions” are not Feasible Options for RNK

The Commission received assurances from the Regional Bell Operating Companies (RBOCs) that they, at the time of the *VoIP E911 Order*, were already offering or about to offer unaffiliated IVSPs access to the Wireline E911 network. The first option was Qwest’s claim that its “PS/ALI” service, when combined with a third-party database update provider, would be sufficient to meet the E911 compliance needs of interconnected VoIP providers.³¹ However, upon closer inspection, the tariffed offering does not seem to be suitable for use by IVSPs. For example, Qwest defines its PS/ALI offering as “a service offering which allows a **Private Branch Exchange (PBX)** switch located on a customer’s premises” to route E911 calls and deliver ANI and location information to “the appropriate Public Safety Answering Point (“PSAP”).”³² According to the tariff, those “are the only intended uses for this service,” and no mention is made for use by IVSPs.

Unlike most businesses, even large businesses with multiple, large building campuses, IVSP customers, mostly residential, are spread out over hundreds or thousands of locations. While it may be a trivial matter to manage employee PBX

²⁹ See *id.* at n. 127-31.

³⁰ See Staff Working Draft, “E-911 Improvement Act,” S.1063 (October 26, 2005).

³¹ *VoIP E911 First Report and Order* at n. 129.

³² Qwest Corporation Minnesota Tariff, effective September 29, 2000, § 9.2.1.B.2.a.

stations over a defined set of buildings and floors within a finite physical plant, it is much more complex to maintain routing and address information, where the subscriber base consists of mostly residential single-line customers, with generally only one end user per location. So, even setting aside the Commission's requirement to update nomadic users' Registered Locations in the ALI database on an ongoing basis,³³ the volume of record updates necessitated by normal customer churn would easily exceed those presented by a "typical" PBX user.

Furthermore, while a PBX subscriber would only be required to maintain a handful (but in any event, a constant number) of trunks to the RBOC Selective Router, the same cannot be said for IVSPs using the service.³⁴ Most likely, in order to service as many customers as possible, an IVSP would have to connect to each of the Selective Routers in a LATA, or a state. With charges ranging from \$30 to nearly \$50 per month per Voice Grade Circuit,³⁵ even if redundant trunks were *not* ordered, this pricing would result in a substantial expenditure, especially given the "interim" nature of the wireline E911 requirement (pending implementation of a real-time location solution).

The requirements of Verizon's "VoIP 911" service, a second option, are also troubling from the standpoint of a small IVSP. This service, according to Verizon's *VoIP 911 Guide*,³⁶ allows "VoIP providers to access 9-1-1 Selective Routers in order to route VoIP end-user 9-1-1 calls."³⁷ Verizon's service is even more economically unfeasible than Qwest's PS/ALI service. IVSPs, like RNK, would be required to purchase special or switched access transport from their location to the E911 Selective Router,³⁸ and it would be likely that Intrastate access rates would apply, or at the very least, interstate

³³ *VoIP E911 First Report and Order* para. 46.

³⁴ See Qwest Corporation Minnesota SGAT, 3rd Revision March 17, 2003, para. 10.3.7.1.1.

³⁵ Qwest Corporation's Minnesota Tariff indicates that the non-recurring charge for the first installed Voice Grade circuit is \$42.29 and \$30.66 for each additional circuit. See Qwest Minnesota Tariff, September 29, 2000, § 9.2.1.B.2.d.4.a.

³⁶ *Verizon VoIP 911 Guide* (July 2005).

³⁷ *Id.* at § 1.3.

³⁸ *Id.* at § 2.2.

access rates, increasing the price further.³⁹ In Verizon territories where RNK has no other option (i.e., where third-party vendors or CLECs are not offering service), this would mean fixed costs of over \$250.00 per month per DS1 (plus mileage) in each E911 Selective Router serving the area.⁴⁰ Worse yet, Verizon “does not currently offer third-party E9-1-1 VoIP database or administrative services.”⁴¹

2. Strict Compliance with the Commission’s Rules Would Require RNK to Obtain CLEC Certification - an Unwarranted and Unintended Consequence

For RNK, the aggregate effect of these barriers to compliance with the *E911 VoIP Order’s* timetable is that the only areas where RNK has been able to demonstrate compliance is where RNK has been certified as a CLEC.⁴² This is because in those regions, RNK has been able to negotiate and implement interconnection agreements, obtain geographically-relevant numbers, and build and deploy wireline E911 for its LEC service offerings. Ironically, this is the very result that RNK warned the Commission about in its *Comments* and *Reply Comments* earlier in this proceeding.⁴³ Indeed, this is the very result that the Commission wanted to *avoid* when it issued its *Vonage Order* last year.⁴⁴ Of course, because Section 251 of the Telecommunications Act of 1996⁴⁵ entitles local exchange carriers to TELRIC (“Total Element Long-Run Incremental Cost”) (i.e. forward-looking cost-based) rates⁴⁶ for Unbundled Network Elements, including

³⁹ It should be noted that Verizon raised its interstate access transport rates effective July 1, 2005 (Verizon FCC Tariff Transmittal No. 589).

⁴⁰ This figure is derived by adding the Local Transport Channel Termination Rate (§ 31.6.1(A)(3)) and the Direct Trunked Transport Channel Mileage Fixed Rate (§ 31.6.1(C)(1)(b)). This excludes the per mile rate of \$19.46.

⁴¹ *Verizon VoIP 911 Guide* at § 1.3.

⁴² RNK is a certified CLEC in Massachusetts, Rhode Island, Florida, New Jersey, Connecticut, New Hampshire and New York (LATA 132).

⁴³ *Comments of RNK, Inc. d/b/a RNK Telecom* at pp. 3-5 (filed Aug. 15, 2005) and *Reply Comments of RNK, Inc. d/b/a RNK Telecom* at pp. 4-7 (filed Sept. 12, 2005), WC Docket Nos. 04-36 and 05-196.

⁴⁴ *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, Memorandum Opinion and Order*, WC Docket No. 03-211, FCC 04-267 (released November 12, 2004, hereinafter, “*Vonage Order*”).

⁴⁵ 47 U.S.C. 201 *et seq.*

⁴⁶ 47 U.S.C. § 251(c)(2)(D), 47 U.S.C. § 252(d)(1).

access to E911, RNK is able to obtain more favorable pricing from the ILECs than in those territories where it is not a CLEC.⁴⁷ Outside of its footprint, RNK is in the same position as other IVSPs - at the mercy of ILECs and saddled with the ILECs "reasonable" rates for these same services as discussed above.

Indeed, when Congress recognized that unequal bargaining power existed between nascent CLECs and the incumbent LECs (much like nascent IVSPs and incumbent LECs today), Congress imposed requirements on ILECs to negotiate pricing, terms, and conditions upon request by CLECs, without which CLECs would have had no chance to survive for even the relatively short period in which some have survived.⁴⁸ No parallel obligation exists for IVSPs. CLECs and other telecommunications carriers have both State and Federal "expedited" dispute resolution mechanisms⁴⁹ to force ILECs to live up to their obligations. IVSPs, however, are not "equal" partners or competitors to ILECs, but instead are just "customers" of an E911-providing ILEC subject to retail pricing.

It seems an unavoidable conclusion, at least to an IVSP that is a CLEC in some jurisdictions, but not in others, that the only way, absent relief from the Commission, to provide E911 service to an IVS subscriber would be to obtain CLEC certification in every jurisdiction in which it intended to offer service.⁵⁰ The Commission, in its *Vonage Order*, expressly rejected this notion, stating "[t]he administrative process involved in entry certification and tariff filing requirements, alone, introduces substantial delay in time-to-market and ability to respond to changing consumer demands, not to mention the impact these processes have on how an entity subject to such requirements provides its

⁴⁷ See n.49, *supra*.

⁴⁸ 47 U.S.C. §§ 251 and 252.

⁴⁹ Such as the FCC's "Rocket Docket" at 47 C.F.R. § 1.730 (1998).

⁵⁰ *In the Matter of Administration of the North American Numbering Plan*, Order, FCC 05-20, CC Docket No. 99-200, FCC 05-20 (rel. Feb. 1, 2005) ("SBCIS Waiver Order") at ¶ 4.

service.”⁵¹ Indeed, the administrative process in obtaining certification may take several months in some states.⁵² As such, due to the *Vonage Order*, states would have no direct regulatory control over RNK’s IVS offerings, but RNK would still have to comply with the same “patchwork” of state regulations merely to develop one, albeit critical, component to its overall service. RNK believes that in requiring IVSPs to offer E911 services, the Commission never intended to impose on it the burden of obtaining certifications in all states, merely to receive truly “reasonable” rates, terms, and conditions for E911 access, and hopes the Commission will give RNK and small IVSPs the time needed to implement reasonable E911 solutions.

3. *Small Providers like RNK Need More Time to Evaluate Potential Solutions Prior to Implementation*

As noted above, RNK is a small, privately held company with (as of this writing) less than 120 employees. In nearly all geographic areas where RNK is seeking waiver, RNK is currently either actively negotiating with Third Party Providers of 911 call delivery systems and/or testing these services with the intent to make them available to subscribers in a relatively short period of time.⁵³ Because of RNK’s limited human and technical resources, however, it is only possible to perform a finite amount of testing and/or turn up of service in a limited period of time. RNK also needs to ensure that the solutions provided by their vendors are compatible with both their network infrastructure and CPE. However, despite RNK’s successful seven-year old CLEC business, savvy in

⁵¹ *Vonage Order* at ¶ 20.

⁵² See California PUC website (“How to apply for a Certificate Public Convenience and Necessity (CPCN) to become a Competitive Local Carrier (CLC)”) <http://www.cpuc.ca.gov/static/telco/information+for+providing+service/clc+ap+plication/index.htm> (“The certification process [...] takes about three months.”; From the Virginia Corporation Commission website (“Virginia CLEC Certification Status Report”) <http://www.scc.virginia.gov/division/puc/industry/lecap.pdf>), the estimated average time from filing to authorization is approximately 3–4 months; Illinois Commerce Commission, (“Certification Process FAQ’s”) located at (<http://www.icc.illinois.gov/tc/Certfaq.aspx>) “It typically takes two to three months for this process to culminate and a certificate is granted.”

⁵³ See Section II(B), *supra*.

the industry, and credit resources that put it in the upper end of IVSPs in terms of being able to create solutions and comply with the Commission's Orders and edicts, unlike the few large IVSPs, RNK can not spend the capital or hire the personnel necessary to build network infrastructure that is required in the time frame given. RNK also worries that if it did have and spend the capital, that such a system might be obsolete within 12 months if the Commission adopts a GPS-based system, or a system similar to that used by wireless providers involving non-wireline databases and infrastructure like the ALI and MSAG.⁵⁴

In the meantime, as the Commission is aware,⁵⁵ RNK is pursuing development of a GPS-enabled solution, the "Edison," that will fulfill the ultimate goal of having a network-independent, location-based ALI or ALI-like solution.⁵⁶ It would be at odds with the Commission's objectives and to the spirit of innovation that a small provider like RNK brings, to require it to meet an unrealistically aggressive timeframe, on what ultimately appears be a stopgap measure. Therefore, RNK requests that the Commission allow RNK, and other IVSPs the time, and flexibility, as described herein and in the most recent drafts of federal legislation⁵⁷, to create realistic time frames and 911 services.

4. The Commission Should Consult Wireless E911 Implementation Deadlines

In considering RNK's Request for Limited Waiver, the Commission should draw on its experience with Phase II implementation pursuant to its original wireless E911 rules adopted in 1996, (revised in 1999 to incorporate the development of handset-

⁵⁴ *VoIP E911 First Report and Order*, para. 57.

⁵⁵ *Ex Parte* letter from Matthew T. Kinney, Legal Asst./Regulatory Analyst, RNK Telecom to Marlene H. Dortch, Secretary. WC Dockets 04-36 and 05-196. (July 11, 2005). Comments of RNK, Inc., d/b/a RNK Telecom. WC Dockets 04-36 and 05-196. (August 15, 2005).

⁵⁶ See, e.g., RNK Telecom, *RNK to Launch E911 VoIP Solution Ahead of FCC Mandate, RNK Ushers in New Era of VoIP with GPS-Enabled E911 Technology*, Press Release (July 7, 2005), <http://www.rnktel.com/RNKinthenews.html#E911Solution>.

⁵⁷ See Staff Working Draft, "E-911 Improvement Act," S.1063 (October 26, 2005).

based solutions).⁵⁸ Wireless providers had nearly two (2) years to implement Phase I 911, four (4) years to implement a network based Phase II solution, and nearly six (6) years to implement a handset or hybrid based solution, and the FCC just recently again extended hand-set deadlines for certain providers.⁵⁹ The Commission recognized the unique circumstances and limitations of Tier III wireless carriers,⁶⁰ by providing them with additional time to comply.⁶¹ Further, the Commission anticipated the receipt of waivers from wireless providers since there could be circumstances when deployment of wireless E911, as required, would not be technically or economically feasible within the required timeframes.

In its *VoIP E911 First Report and Order*, the Commission provided IVSPs with a mere four (4) months to provide E911 service to all of their subscribers. While acknowledging that the timeframe was aggressive, the Commission offered no phase-in approach, extended deadlines for Tier III-type providers, or anticipated waiver mechanism as it did for wireless carriers. As demonstrated in our Request for Limited Waiver, however, there are also technical, economic, and other considerations associated with implementation by IVSPs of E911 pursuant to the Commission's orders. As such, it would be equitable for the Commission to provide those IVSPs that have demonstrated good cause for a limited waiver of the VoIP E911 Rules with a reasonable extension of time beyond the four (4) months allowed by the Commission to come into full compliance.

⁵⁸ Dale N. Hatfield, *A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services*, at 7; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Report and Order and Further Notice of Public Rulemaking*, 11 FCC Rcd. 18676 (1996) (*Wireless E911 First Report and Order*).

⁵⁹ 47 C.F.R. § 20.18; See *Wireless E911 First Report and Order*, In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, FCC 05-182 (October 28, 2005).

⁶⁰ The Commission defines Tier III service providers as non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, Order to Stay, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*).

⁶¹ *Id.*

VI. CONCLUSION

RNK has demonstrated good cause for requesting a limited waiver of sections 9.5(b) and (c) of the Commission's VoIP E911 Rules⁶² and has shown that it has been proactive and (necessarily) creative, and has spent considerable capital in attempting to achieve full compliance by the Commission's deadline. Likewise, RNK has made adherence to the Commission's VoIP E911 Rules its top priority, and has provided the Commission with RNK's clear path toward full compliance for the approximately twenty-five percent (25%) of RNK's subscriber and end-user base that will likely remain noncompliant on November 28, 2005. As such, RNK respectfully requests that the Commission grant its Request for a Limited Waiver and, as the compliance deadline is fast approaching, RNK requests that the Commission grant the requested relief in an expedited fashion.

Respectfully submitted, by the undersigned,



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⁶² *Id.*